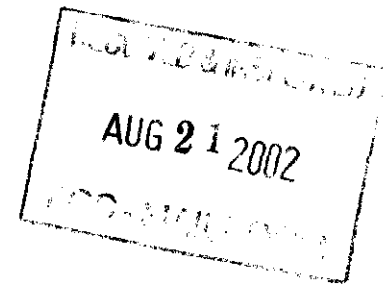


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Jumoke Charter School)
Hartford, Connecticut)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-237576

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER**Adopted: August 8, 2002****Released: August 9, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Jumoke Charter School (Jumoke Charter), Hartford, Connecticut.¹ Jumoke Charter seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Jumoke Charter's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny Jumoke Charter's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on March 15, 2002, approving Jumoke Charter's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD approved Jumoke Charter's request for discounts for internal connections, Funding Request Number (FRN) 558691, but modified the amount funded.⁴ SLD modified this amount because Jumoke Charter's funding request included Microsoft Back Office, an ineligible product.⁵ On May 15, 2002, Jumoke Charter filed an appeal

¹ Letter from Michael Sharpe, Jumoke Charter School, to Federal Communications Commission, filed June 21, 2002 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael Sharpe, Jumoke Charter School, dated March 15, 2002 (Funding Commitment Decision Letter).

⁴ *Id.*

⁵ *Id.*

of SLD's decision, stating that its choice of Microsoft Back Office server media and license was the most cost effective way to purchase eligible core operating software and that the unbundled cost of ineligible SQL Server and Systems Management should be considered incidental.⁶ On June 3, 2002, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Jumoke Charter's appeal because it was received more than 60 days after the March 15, 2002 Funding Commitment Decision Letter was issued.⁷ Jumoke Charter subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.⁸ Documents are considered to be filed with the Commission only upon receipt.⁹ Because Jumoke Charter's Request for Administrator Review was not filed within the requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that Jumoke Charter is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's modification to funding requested for discounted services, FRN 558691, we deny that request as well.¹⁰ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹¹ Jumoke Charter has not shown good cause for the untimely filing of its initial appeal. Jumoke Charter states that upon calling the Client Services Bureau at SLD as well as contacting SLD by electronic mail, it was advised that the appeal must be *postmarked* no later than 60 days of the date that the relevant Funding Commitment Decision Letter was issued.¹²

5. We conclude that Jumoke Charter has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its

⁶ Letter from Michael Sharpe, Jumoke Charter Catholic School, to Schools and Libraries Division, Universal Service Administrative Company, filed May 15, 2002 (Request for Administrator Review).

⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael Sharpe, Jumoke Charter School, dated June 3, 2002 (Administrator's Decision on Appeal).

⁸ 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002).

⁹ 47 C.F.R. § 1.7.

¹⁰ See 47 C.F.R. § 54.720(b).

¹¹ See 47 C.F.R. § 1.3.

¹² Request for Review at 1.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

appeal to be considered on the merits. The March 15, 2002 Funding Commitment Decision Letter clearly states that "your appeal must be ... RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) ... WITHIN 60 DAYS OF THE ... DATE ON [THE FUNDING COMMITMENT DECISION LETTER]."¹⁴

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Jumoke Charter seeks relief on the basis that SLD representatives incorrectly advised it that its appeal only needed to be postmarked within 60 days of the date of the Funding Commitment Decision Letter. We decline to grant relief on those grounds. Where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.¹⁵

7. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.¹⁶ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf.¹⁷ Here, Jumoke Charter fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

¹⁴ Funding Commitment Decision Letter at 2.

¹⁵ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046).

¹⁶ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Comm. Car. Bur. rel. November 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

¹⁷ See *Request for Review by Dermott Special School District, Hoven School District No. 53-2, Mastics-Moriches-Shirley Community Library, Mounds Public Schools, Reading-Muhlenberg Area Vocational-Technical School, Versailles Exempted Village Schools, Westbrook School Department, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-252777, SLD-261808, SLD-277850, SLD-265880, SLD-257325, SLD-270374, SLD-220712, CC Docket Nos. 96-45 and 97-21, Order, DA 02-643 (Comm. Car. Bur. rel. March 19, 2001).

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Jumoke Charter School, Hartford, Connecticut, on June 21, 2002, and the request to waive the 60-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark Seifert
By *ENE*

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau